Office-Supreme Court, U.S.
FILED
AUG 18 1961
JAMES R. BROWNING, Clerk

No. 237

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, *et al., Petitioners,*

v.

SWITCHMEN'S UNION OF NORTH AMERICA, *et al., Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

BRIEF IN OPPOSITION

LEE LEIBIK,
343 South Dearborn Street
Chicago 4, Illinois

RUTH WEYAND,
1346 Connecticut Avenue, N.W.
Washington 6, D. C.

Attorneys for Respondents

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
Questions Presented	3
Statutes Involved	3
Statement	4
Reasons for Denying the Writ	14
Conclusion	33
Appendix	34

CITATIONS

Brotherhood of Railroad Trainmen v. Howard, 1952, 343 U.S. 768	16
Capital Transit Co., 1953, 106 N.L.R.B 169	31
W.W. Cross & Co., Inc., 1959, 77 N.L.R.B. 1162, 1166, n. 11, enforced 1 Cir., 1950, 174 F. 2d 875	31
Elgin Standard Brush Mfg. Co., 1950, 98 N.L.R.B., 1467 1484	31
First National Bank of Lowell v. Lowell National Bank, 47 F. Supp. 925, 927 (D.C.N.D. Ind., 1942)	24
The Fort Industry Co., 1948, 77 N.L.R.B. 1287, 1300	31
Lloyd A. Fry Roofing Co. v. N.L.R.B., 4 Cir., 1942, 127 F. 2d 180, 185, certiorari denied, 317 U.S. 652	30
Graham v. The Brotherhood of Firemen, 1949, 338 U.S. 232	16
Great Southern Trucking Co. v. N.L.R.B., 4 Cir., 1942, 127 F. 2d 180, 185, certiorari denied, 317 U.S. 652	31
Hamilton Watch Co. v. Benrus Watch Co., 206 F. 2d 738, 740 (2 Cir. 1953)	12
Milwaukee Electric Tool Corp., 1954, 110 N.L.R.B. 977, 978	31
Missouri-Kansas-Texas Railroad Co. v. Randolph, 8 Cir., 1950, 182 F. 2d 996	22
N.L.R.B. v. New Britain Machine Co., 2d Cir., 1954, 210 F. 2d 61	30

Page

Railroad Yardmasters v. Pennsylvania Railroad Co., 3 Cir., 1955, 244 F. 2d 226 22
Randolph v. Missouri-Kansas-Texas Railroad Co., D.C. N.D. Mo., 1949, 85 F. Supp. 846 22
Shell Oil Co., 1948, 77 N.L.R.B. 1306, 1307, n. 4 31
Virginian R. Co. v. System Federation No. 40, 1937, 300 U.S. 515 16

STATUTES:

Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. 431:

Section 3 (e) 29
Section 3 (j) 29
Section 201 (a) (5) (K) 29

Norris-La Guardia Act, 47 Stat. 70, 29 U.S.C. 101, *et seq.*:

Section 1 ..... 2, 34
Section 4 ..... 17, 34
Section 7 ..... 2, 16, 17, 18, 19, 35
Section 13 35

Railway Labor Act of 1926, 44 Stat. 577 26

Railway Labor Act, as amended, 48 Stat. 1185, 45 U.S.C. 151, *et seq.*:

Section 2, First 24, 25
Section 2, Second 24, 25
Section 7, First 31

Transportation Act of 1920, Section 301, Part III, 41 Stat. 456 25

CONGRESSIONAL MATERIAL:

75 Cong. Rec.:

4505 20
4507 20
4508 20
4630 20
4779 20
5479 20

Page

H.R. 10453, Section 301 (1919), 66th Cong., 1st Sess. 25
H. Rept. No. 650, 66th Cong., 1st Sess., Feb. 18, 1920 26
H. Rept. No. 328, 69th Cong., 1st Sess., Feb. 19, 1926, on H.R. 9463, p. 3 26
S. Rept. No. 202, 69th Cong., 1st Sess., February 22, 1926, on H.R. 9463 27
S. Rept. No. 606, 69th Cong., 1st Sess., April 16, 1926, on H.R. 9463 27
S. Rept. 187, on S. 155, 86th Cong., 1st Sess. (Leg. His. LMRDA, pp. 402, 405) 29
S. 2306, a bill identical to H.R. 9463 (Rep. No. 222, 69th Cong., 1st Sess., Feb. 22, 1926) 27
S. 3288, 66th Cong., 1st Sess. 25

MISCELLANEOUS:

The American Civil Liberties Union, Democracy in Trade Unions, N.Y., Nov. 1943, p. 72 29
Beal, Edwin F., and Wickersham, Edward D., The Practice of Collective Bargaining, 1959, p. 274 .. 28
Chamberlain, Neil W., Collective Bargaining, 1951, pp. 77-80 28
Davey, Harold W., Contemporary Collective Bargaining, 2nd ed., 1959, p. 234 28
Reynolds, Lloyd C., Labor Economics and Labor Relations, 3rd ed., 1959, p. 178 28

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 237

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, *et al., Petitioners,*

v.

SWITCHMEN'S UNION OF NORTH AMERICA, *et al., Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

BRIEF IN OPPOSITION

Respondents, Switchmen's Union of North America and its officers, who are sued individually and as representatives of the union and its members, oppose the petition for a writ of certiorari. The United States Court of Appeals for the Second Circuit unanimously

held "clearly erroneous" (App. A to Pet., p. 49)[1] on the evidence, the findings of the District Court that there was a probable violation of the Railway Labor Act. This reversal on the evidence makes irrelevant the portions of the opinion below discussing the interrelations of the Railway Labor Act and the Norris-La Guardia Act. The case hence presents no issue deserving of consideration by this Court. Prompt denial of the petition for a writ of certiorari is essential to free the switchmen of an injunction which, as the court of appeals held, plainly exceeded the jurisdiction of the district court, as limited by the express language of Section 4 of the Norris-La Guardia Act and, "very likely" also, as limited by Section 7 of the Norris-La Guardia Act (App. A to Pet., pp. 49-50 and p. 50, n. 8). After long drawn out processing from March 1959 on, of a grievous wage inequity, through all the steps required by the Railway Labor Act, the switchmen have for almost a year been restrained by an injunction which the district court was without jurisdiction to issue. There should be no further delay in giving effect to the decision of the court of appeals that this injunction is invalid.

---

[1] App. A to Pet. "denotes Appendix A to the Petition for a Writ of Certiorari;" "S.A." denotes the Switchmen's Appendix below, bearing the title "Appendix to Brief for Defendants-Appellants:" "C.A." denotes the Carriers Appendix below bearing the title "Appendix to Brief for Plaintiffs-Appellees." This form of designation is here adopted on the assumption that use of the same form of designation as appears in the Petition for a Writ of Certiorari will be convenient to all concerned.

QUESTIONS PRESENTED

1. Whether, where the district court issues a preliminary injunction based on findings that there has probably been a violation of the Railway Labor Act, the court of appeals may reverse on determining that on the evidence the findings of probable violation are clearly erroneous.

2. Whether, where union negotiators are given full power to bargain collectively on behalf of the employees, subject to only the limitation that any agreement reached to be binding must be ratified by vote on referendum of a majority of the affected employees, the ratification limitation constitutes *per se* a violation of the Railway Labor Act.

3. Whether a union violates the Railway Labor Act when its negotiators make several counterproposals and submit to referendum vote of the affected employees the best agreement they are able to obtain with the carriers but fail to recommend its acceptance and fail to ballot employees with respect to whether they wish to arbitrate the dispute.

4. Whether, where the evidence presented no issues of credibility but solely the legal effect of admitted facts, the court of appeals may properly set aside the findings of the district court which the court of appeals determines are clearly erroneous.

STATUTES INVOLVED

The pertinent provisions of the Norris-La Guardia Act (47 Stat. 70, 29 U.S.C. 101, *et seq.*) are set forth in the Appendix to this brief (pp. 34-36, *infra*). The pertinent provisions of the Railway Labor Act, as amended (48 Stat. 1185, 45 U.S.C. 151, *et seq.*) are set forth in Appendix B to the petition (Pet., pp. 51-54).

STATEMENT

At all times here material the Union has been the duly certified exclusive bargaining representative of the yard service employees of the seventeen petitioner carriers (S.A. 4). These yard service employees consist of three crafts and classes, namely: (1) yard conductors or foremen; (2) yard brakemen or helpers; and (3) switchtenders (S.A. 4).

On March 2, 1959, the Union served a formal written notice on each of the seventeen petitioner carriers reciting that in accordance with the provisions of the Railway Labor Act, notice was thereby given of the employees' desire to change the provisions of existing agreements governing rates of pay for employees represented by the Union by making increases therein as proposed in said notice (S.A. 36-37, 108). On March 20, 1959, each of the carriers acknowledged receipt of the foregoing notice from the Union and in turn gave notice of the carriers' desire to reduce wages (S.A. 37-38, 108).

Individual conferences on the Union's proposal and the carriers' counter-proposal were held on the individual properties in March 1959 (S.A. 21). When the individual carriers and the Union were unable to reach an agreement, it was arranged by correspondence between the carriers and the Union that negotiations on the foregoing notices would be handled for the carriers by the Western Carriers' Conference Committee and for the Union by its National Committee (S.A. 108). The Union's National Committee was composed of the Union's chief officials, including Neil P. Speirs, President of the Union; William R. Meyers, Executive Vice President of the Union; James Keenan, General Chair-

man of the Union on the Delaware, Lackawanna & Western Railroad Company; Floyd A. Combs, General Chairman of the Union on the Great Northern Railway Company, and John S. Tamasha, General Chairman of the Union on the Denver, Rio Grande and Western Railroad (S.A. 94, 105-106). This committee had full knowledge of all the relevant facts and full authority to enter into an agreement subject to ratification by the affected employees (S.A. 132).

The Union's National Committee met with the Western Carriers' National Conference Committee on September 17, 22 and 24, 1959 (S.A. 108). No agreement having been reached, the Union and the carriers jointly applied to the National Mediation Board for its services (S.A. 108). Conferences between the Union's National Committee and the carriers or with members of the National Mediation Board were held on 43 different occasions between September 24, 1959 and April 1960 (S.A. 108). Being unable to reach a settlement of the wage dispute, the Union accordingly requested the National Mediation Board to terminate its services (S.A. 108).

As required by Section 5(b) of the Railway Labor Act in such circumstances, the National Mediation Board on May 5, 1960 proffered arbitration to the Union and the carriers (S.A. 108-109). On May 10, 1960, the Union wrote the National Mediation Board declining arbitration and sent a copy of that letter to the Chairman of the Western Carriers' Conference Committee (S.A. 109). On May 13, 1960, after the carriers had been notified that the Union had rejected arbitration, the carriers advised the National Mediation Board that they were willing to arbitrate (S.A. 109).

The Union then circulated a strike ballot and the membership overwhelmingly voted to strike in support of their wage proposals (S.A. 21). The National Mediation Board thereupon advised the parties that all practical methods provided for in the Railway Labor Act for adjusting disputes had been exhausted without effecting settlement and that the services of the Board were being terminated (S.A. 21).

Thereafter, on May 23, 1960, the President of the United States by Executive Order No. 10878 created Emergency Board No. 131 to investigate the dispute (S.A. 39-40). The Emergency Board appointed by the President held hearings beginning May 21 and ending June 17, 1960 (S.A. 22).

While the hearings before the Board were in progress, settlements, awards and Emergency Board reports in other crafts and classes of railroad employees came to the attention of the Emergency Board No. 131, considering this dispute and conferences were had between the Board members, the Union and the carriers in which the Board members indicated that they did not believe they could properly award larger percentage increases of pay or on different terms than the pattern adopted in settlements by other crafts and classes unless the Union established that there existed special reasons why the crafts and classes represented by the Union should have different treatment (S.A. 23-26, 81-83). Hearings before the Board were thus limited to one of the bases which the Union had advanced to support its wage proposals, namely, that there existed an intra-industry inequity which should be corrected by giving the crafts represented by the Union their requested wage increases (S.A. 81-83).

On July 8, 1960, Emergency Board No. 131 issued its report to the President in which it recommended that the Union and the carriers accept the two 2 per cent wage increases which had been accepted by the road service crafts and classes (S.A. 18-34). The report correctly recited that the basic day rates of pay of road service employees and yard service employees have historically been fairly close together and continue to be so (S.A. 27), but that due to the dual basis of pay in road service the pattern settlement of a 2 per cent increase in basic day rates which became effective for freight engineers on July 1, 1960, will increase their average annual earnings by $210.16, whereas a similar percentage increase will yield only $132.70 on the average for yard service employees (S.A. 27-28).[2] This would be equally true of the second 2 per cent increase to be effective March 1, 1961 (S.A. 34). The report also recognized that the percentage differential in average hourly earnings of yard ground service employees over that of non-operating employees considered as a group has declined from about 50 per cent in the 1920's to approximately 20 per cent currently due to the preponderance of uniform cents per hour wage increases over the past 30 years (S.A. 32-33).

---

[2] As of May 1, 1960, the basic day rate of yard foreman was $22.58, of yard helper $21.31 and of switchtenders $19.45, or a weighted average daily rate for yard foremen, yard helpers and switchmen of $21.74. The weighted average daily rate of passenger engineers, through freight engineers and local freight engineers came to $22.16. See page 5 of Exhibit D attached to Verified Opposition to Motion for Preliminary Injunction. The dual basis of pay for road service employees resulted in engineers with a lower rate of daily pay working for the same employer making more than $7,500 per year while the switchmen with the higher rate and working longer hours made less than $5,000 per year (S.A. 151).

The report stated that the Board however did not believe that either of the foregoing inequities justified its recommending an increase for yard ground service employees which exceeds the pattern (S.A. 28-33).

Thereafter the Union wrote the Western Carriers' Conference Committee requesting conferences for the purpose of attempting to arrive at an agreement in view of the Emergency Board's report (S.A. 111). Conferences between the Union and the carriers were held for five days in July 1960 and on July 20, 1960 the Union and the carriers reached an agreement subject to ratification by the membership (S.A. 89-92, 111, 116). The July 20, 1960, agreement was promptly submitted to a referendum vote of the membership of the Union and was defeated by a 3-1/2 to 1 vote (S.A. 111). The Union promptly notified the carriers of the rejection of the agreement and proposed that the Union and the carriers set a conference for August 30, 1960, to resume negotiations (S.A. 94). Conferences were accordingly resumed on August 30, 1960 (S.A. 95, 112). At the opening of the conference held on that date Mr. Speirs, president of the Union, stated that the Union's primary interest was to reach an agreement with the carriers, that it was then and always had been the Union's intention to reach an agreement that would settle the wage dispute (S.A. 112). However, the carriers expressed an interest only in the method by which the Union conducted the referendum of its membership and showed no interest in even attempting to discuss the issues on their merits (S.A. 112).

On September 1, 1960, the Union notified the National Mediation Board that a strike would be called on the seventeen plaintiff carriers on September 8,

1960 (S.A. 113). This placed the strike date 60 days after the date the report of the Emergency Board issued although by law only a 30 day cooling off period is required (S.A. 113).

The National Mediation Board requested that the Union postpone the strike date and thereupon the Union withdrew the strike date of September 8, 1960 and set the strike date for September 19, 1960 (S.A. 95-96, 113).

During September 1960 the Union continued to meet and negotiate with the carriers (S.A. 113-114, 121). During these conferences the Union suggested several bases for settling the dispute which it felt certain its membership would ratify (S.A. 124-125, 130). The Union variously offered to settle on the basis of a 3 per cent increase in pay effective July 1, 1960 and another 3 per cent effective March 1, 1961 (S.A. 124-125, 138-140, 145-146), or to accept only the pattern settlement as to pay increases and receive in addition fringe benefits such as improved vacations, a new paid holiday or a paid up life insurance policy (S.A. 113-114, 125-126, 131-132, 141). The carriers however refused to make any concessions beyond those to which they had agreed in the July 20, 1960 agreement (S.A. 121, 141, 145-146, 153).

On September 16, 1960 the carriers filed the instant suit (S.A. 3) and without notice to the Union obtained an *ex parte* restraining order enjoining the proposed strike (S.A. 49-51). In their complaint the carriers alleged that the Union had violated the Railway Labor Act in several respects, the chief of which was that the Union had not made every reasonable effort to make and maintain agreements because the presence in the

Union's Constitution of a provision requiring ratification by the members of the Union of each contract as a prerequisite to its validity deprived the Unions' negotiating committee of any power to bargain in good faith (S.A. 6-10, 12-13).

The complaint also alleged that at no time since the Union's service of its proposal for a wage increase and the carriers' proposal for a wage decrease had the Union treated or bargained with the carriers or offered to enter into any agreement in settlement of the proposals except by entering into the agreement which had been rejected by the membership of the Union (S.A. 9-10; and that the Union had rejected arbitration without submitting to its membership the issue of whether to arbitrate although under the Union's Constitution the Union had no authority to submit to arbitration except upon authorization by a majority vote of the membership (S.A. 6, 10, 13).

The complaint charged that in the foregoing respects the Union had not complied with the provisions of the Railway Labor Act, that the threatened strike was therefore unlawful, and that hence the Norris-La Guardia Act was inapplicable.

The complaint prayed that the Union be enjoined from engaging in a strike and be directed to bargain in good faith and to designate and give authority to representatives to make agreements (S.A. 16).

The plaintiffs filed a separate motion for preliminary injunction alleging that the Union had called a strike effective September 19, 1960, and that the strike would be unlawful because the Union had failed to bargain in good faith and had failed to exhaust the procedures of the Railway Labor Act (S.A. 48-49).

The Union filed a verified opposition to the motion for a preliminary injunction, in which the Union relied upon the Norris-La Guardia Act (29 U.S.C. 101, *et seq.*) as depriving the court of jurisdiction to issue the injunction prayed (S.A. 56). The Union alleged that the scheduled strike was for a lawful purpose (S.A. 51) and that it would be conducted in a lawful manner (S.A. 52). The Union further alleged that prior to the date fixed for the strike the Union had processed its wage proposals through all the procedures prescribed by the Railway Labor Act as preliminary to the right to strike and had waited out in full all the periods prescribed as waiting periods in that Act and hence on the date set for the strike and at all times thereafter the Union was legally entitled to call its members out on strike in support of its wage proposals (S.A. 51-52).

With respect to the contention that the ratification requirements in the Union's Constitution deprived the Union of power to comply with the bargaining requirements of the Railway Labor Act, the Union alleged that such a ratification requirement was a characteristic of collective bargaining as practiced by a substantial segment of the American labor movement as appeared from the presence of a similar provision in the constitutions of many unions, copies of which constitutional provisions were collected and attached to the verified opposition as an exhibit (S.A. 52-53, 63-80), that prior to the filing of this suit neither the National Mediation Board nor any carrier had ever claimed that the ratification requirement violated the Railway Labor Act or prevented the Union from bargaining in good faith (S.A. 53) and that the Union here had in fact treated

with the carriers and made every reasonable effort to reach an agreement (S.A. 51-52).

With respect to the allegation that the Union had improperly rejected arbitration, the verified opposition pointed out that there is no requirement in the Railway Labor Act that the Union agree to arbitration or seek from its membership authorization to arbitrate (S.A. 53).

The district court held a two day hearing on the motion for preliminary injunction in which all parties presented witnesses and exhibits (S.A. 84-152).

On October 1, 1960, the district court entered its findings of fact, conclusions of law, decision and order (S.A. 163-174) and granted a preliminary injunction restraining the Union from striking until further order of the court (S.A. 174-175). The district court held that the provision in the Union's constitution requiring ratification by the membership before any agreement became binding on them presented "serious, substantial, difficult and doubtful questions as to whether the defendants have failed and refused to exert every reasonable effort to make and maintain an agreement or agreements concerning the proposals contained in the notices of March 2 and March 20, 1959" (S.A. 167-168). The district court also found that "At no time since the service of the notices of March 2 and March 20, 1957, have the defendants or any representatives of the defendants engaged in good faith efforts to reach final agreement with the Western Carriers' Conference Committee, or offered to enter into any agreement or agreements in settlement of the proposals contained in said notices, or submitted any proposal or proposed settlement or agreement to the membership of defendant

Switchmen's Union, except for the taking of a strike ballot on the terms of the defendants' original notice of March 2, 1959, and except, further, for the submission without recommendation of the proposed agreement" (S.A. 167). The district court held that hence there was serious question as to whether the Union had complied with the Railway Labor Act and consequently the Norris-La Guardia Act was not applicable (S.A. 173). The court expressly refrained from ruling on the other issues raised in the complaint (S.A. 174).

Upon appeal, the Court of Appeals for the Second Circuit set aside as "clearly erroneous" on the evidence the findings of the district court that there was a probable failure to bargain in good faith (App. A to Pet., p. 49). The court of appeals held that the evidence established that the Union had in fact made counter-proposals (App. A to Pet., p. 48, n. 48); that as a matter of law the Railway Labor Act was not violated by the requirement that agreements negotiated by union committees be ratified by the affected employees (App. A to Pet., pp. 42-43); since no probable violation of the Railway Labor Act had been established, there was no occasion to accommodate the Norris-La Guardia Act to the Railway Labor Act; that the Norris-La Guardia Act was fully applicable and Section 4 clearly prohibited the injunction below, as "very likely" also did Section 7 (App. A to Pet., pp. 49-50 and n. 9, p. 50). The court of appeals accordingly reversed the injunction as beyond the jurisdiction of the district court (App. A to Pet., p. 50).

REASONS FOR DENYING THE WRIT

1. The petition for a writ of certiorari presents no question deserving of review by this Court. While the court of appeals began its opinion with the statement that the appeal "raises important questions as to the inter-relations of the Railway Labor Act, 45 U.S.C. §§ 151 ff., and the Norris-La Guardia Act, 29, USC. §§101 ff." (App. A to Pet., p. 30), the court expressly refrained from deciding any of these important questions (App. A to Pet., p. 41). At the point in its opinion where the court stated the lack of necessity to define the area of accommodation between these two statutes, the court held that accommodation at most would be needed in "a clear case of union failure to comply with obligations under the Railway Labor Act, and the record affords no warrant for finding that in the instant case" (App. A to Pet., p. 41).

The first question which is urged in the petition for a writ of certiorari (p. 2), is premised, we believe, on an assumption that the court below held that there must be a clear showing of a violation of the Railway Labor Act before it was necessary to decide if a district court had jurisdiction under the Norris-La Guardia Act temporarily to enjoin a strike. But the actual holding of the court below was that in this case there was no evidence of any possible violation of the Railway Labor Act and hence the findings of probable violation were "clearly erroneous" (App. A to Pet., p. 49). For here in distinguishing *Hamilton* v. *Benrus*, 2 Cir., 1953, 206 F. 2d 738, 740, which formulates the rule for issuance of a temporary injunction in the terms upon which petitioner bases its first question (Pet., p. 2) and its argument (Pet., pp. 11-12), the court below stated (App. A to Pet., pp. 48-49):

"Appellees say this does not matter in view of the judge's alternative finding that 'There are serious, substantial, difficult, and doubtful questions' on the issue of good faith. They urge that since it is only a temporary injunction we are reviewing, and no one has contested the finding that irreparable damage would flow from its denial, the only point open to review is whether even this alternative finding was clearly erroneous, citing particularly our decision in *Hamilton Watch Co.* v. *Benrus Watch Co.*, 206 F. 2d 738, 740 (2 Cir. 1953), from which the quoted language was evidently taken.

"We think this an overly literal reading of *Hamilton* v. *Benrus;* the language quoted from Judge Frank's opinion must be taken along with the beginning of the sentence, 'To justify a temporary injunction it is not necessary that the plaintiff's right to a final decision, after a trial be absolutely certain, wholly without doubt,' and the statement that the Court could not 'possibly' declare the District Court's substantive findings of probable Clayton Act violation to have been clearly erroneous. Here we regard the finding of breach of the Railway Labor Act by the Union as being so on the evidence the judge had before him; *Hamilton* v. *Benrus* does not say it is enough that further evidence might demonstrate it was not."

We believe a careful reading of footnote 8 of the court's opinion also shows that the court below regarded the record as having "no proof" of violations of the Railway Labor Act. In this footnote the court stated (App. A to Pet., p. 50, n. 8):

"The Switchmen here urge that the injunction was also unlawful under § 7, both because violations of the Railway Labor Act are not 'unlawful acts' within § 7(a) and because there is no proof

> of such violations in this case. For reasons pointed out in the text, we think the first proposition scarcely reconcilable with the *Virginian*, *Graham* and *Howard* cases. The second is very likely so, but our holding as to § 4 is dispositive."

We believe the word "so" in the phrase "very likely so" refers to the reconcilability with the *Virginian*, *Graham* and *Howard* cases of treating Section 7 of the Norris-La Guardia Act as barring an injunction when there is no proof of unlawful acts. Thus, the court is saying that where, as here, there is no proof of any unlawful act, treating the injunction as barred by Section 7 of the Norris-La Guardia Act is very likely reconcilable with the *Virginian*, *Graham* and *Howard* cases.

Therefore, we respectfully urge that the first question stated in the petition (p. 2) is not presented by the record in this case. We do not believe a case can be said to present "serious, substantial, difficult and doubtful questions going to the merits of the case" when the evidence clearly shows there is not even a probable case.

2. While we do not believe the first question stated in the petition is presented by the record in this case, the court below as a third alternative ground for reversing the injunction ruled on this question in favor of the Union. It's ruling on this question was beyond question correct and for that reason affords no occasion for further review by this court. In this respect the court stated (App. A to Pet., pp. 49-50):

> "Beyond this, whatever the general rule as to the scope of review of temporary injunctions may be, no such principle as plaintiffs advocate can be applicable to a claim that such an injunction transgresses the command of § 4 of the Norris-La Guardia Act. That section uses the most emphatic

> words possible—'No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction' against a peaceful strike. To overcome that bar plaintiffs had the burden of showing, as a matter of law, that the broad command of § 4 is subject to an exception when a Union has violated its duties under the Railway Labor Act and, as a matter of fact, that the defendant here had done that. They were obliged to meet that burden, not simply to show they might be able to meet it; until they met it, the court was without power to issue an injunction whether temporary or permanent." (footnotes omitted)

Both the express language and the legislative history of the Norris-La Guardia Act show that Congress intended to impose different requirements for temporary injunctions in labor cases than were applicable to non-labor cases. Section 4 of the Norris-La Guardia Act deprives all United States courts of jurisdiction to issue any temporary injunction, in a case involving a labor dispute, to prohibit any person interested in such dispute from going on strike (29 U.S.C. 104 (a)). Section 7 of the Norris-La Guardia Act deprives all United States courts of jurisdiction to issue any temporary injunction of any sort in a labor dispute except upon finding that unlawful acts have been threatened and will be committed unless restrained and that public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection (29 U.S.C. 107 (a) and (c)).

Tested by the foregoing jurisdictional standards, the preliminary injunction issued here (S.A. 174-175) exceeded the jurisdiction of the district court in three respects. It prohibited a strike by persons admittedly

interested in a labor dispute within the meaning of the Norris-La Guardia Act (S.A. 174-175). It issued an injunction in a labor dispute without making the requisite findings that unlawful acts have been threatened and will be committed unless restrained and that police protection is inadequate.

No rules in non-labor cases with respect to the discretion of a judge to preserve the *status quo* by a temporary injunction are relevant where, as here, the district court was wholly without jurisdiction to enjoin a strike and without jurisdiction to issue an injunction except on findings of unlawful acts and inadequate police protection.

Congress by providing as a jurisdictional prerequisite in Section 7 of the Norris-La Guardia Act (29 U. S.C. 107) to the issuance of both temporary and permanent injunctions the same requirements of hearing the testimony of witnesses in open court and the same findings of fact that unlawful acts have been threatened and will be committed unless restrained, obviously meant to, and did, eliminate the distinction between temporary and permanent injunctions which exists in non-labor cases and is typified by the law with respect to scope of review set forth in the petition (pp. 11-12). Section 7 makes it clear that the same finality of findings with respect to both law and fact as is required for permanent injunctions is a jurisdictional prerequisite to a temporary injunction in a labor dispute case. Section 7 provides (29 U.S.C. 107):

> "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this Act, except after hearing the testimony of witnesses in open court

(with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

This treatment of temporary and permanent injunctions in identical fashion makes untenable any contention that a more indefinite form of finding suffices to support a temporary injunction than is required for a permanent injunction.

The legislative history of the Norris-La Guardia Act shows that its proponents meant by Section 7 (a) to require an actual finding of unlawfulness as a preliminary to any injunction. Congressman La Guardia in-

sisted that bill "prevents the courts from enjoining lawful acts" (75 Cong. Rec. 5479). Senator Norris similarly stated (75 Cong. Rec. 4505, 4507, 4508):

> "The Abuse of the Power of Injunction—one of the indefensible things contained in a great many of the labor injunctions issued by Federal judges is the enjoining of the defendants from exercising their legal right under state law given them by a State statute.
>
> * * * * * * * * * * *
>
> "* * * Something is made a crime which is not a crime under the law."

Senator Blaine in supporting the bill on the floor of Congress stated (75 Cong. Rec. 4630):

> "Yet, more important are the provisions relating to the proof upon which injunctions and restraining orders may be issued. Before any such order can be issued the court must find that unlawful acts have been committed by the defendants and are likely to be continued. * * *"

Senator Blaine further emphasized the need to require findings of actual unlawfulness before an injunction issues, in the following colloquy (75 Cong. Rec. 4779):

> "Mr. Logan: What I desire to ask the Senator is on that very point. Is it the contention of the Senator that an injunction might be granted without the establishment of the fact that an unlawful act had been committed?
>
> "Mr. Blaine: And will be continued?
>
> "Mr. Logan: Yes. Can an injunction be obtained under that state of facts without first establishing that an unlawful act has been committed?

That must be established before it is possible to issue an injunction?

"Mr. Blaine: And that that act will be continued unless restrained. Why should an injunction issue if an unlawful act has not been committed?

"Mr. Logan: Suppose it has only been threatened. Suppose they have said, 'We are going to commit this act,' and it has not yet been committed.

"Mr. Blaine: I do not think we ought to base this bill upon the proposition that somebody has a fear that somebody is going to do something. There ought to be proof that unlawful acts have taken place — they may not be overt acts at all; they may be of some other character — and that those acts will continue and that irreparable and substantial injury to complainant's property will follow besides the other necessary allegations.

"Mr. Glenn: As I understand the Senator's position, it is that no restraining order or injunction should be granted until some unlawful act has been committed. That is the position?

"Mr. Blaine: That precedent to the commencement of this suit there must have been an unlawful act committed and an allegation that it will continue."

Under the guise of maintaining the *status quo* until it could determine whether the requirement of ratification violated the Railway Labor Act, the district court enjoined acts without actually finding them illegal. Whether this was done under the guise of postponing the jurisdictional or the substantive issue until a hearing on the merits, the result was the same—a strike has been enjoined which is obviously a perfectly legal strike. The district court had no power to assume jurisdiction on the theory the Railway Labor Act may have dis-

placed the Norris-La Guardia Act. At most it would have had jurisdiction if it had found (which clearly it could not correctly have found) that as to the facts here involved the Railway Labor Act did displace the Norris-La Guardia Act.

3. There are no conflicting decision. As the court below pointed out (App. A to Pet., p. 50, n. 7), in *Railroad Yardmasters* v. *Pennsylvania R. Co.*, 3 Cir., 1955, 224 F. 2d 226, "there was no determination by the Court of Appeals that the substantive finding which the District Court had made on the evidence presented in that case of threatened unlawful action by the railroad, was clearly erroneous." Here, of course, there was such a finding (App. A to Pet., p. 49). Moreover, there was no injunction barring a strike in that case and no issue of whether the absolute language of Section 4 of the Norris-La Guardia Act can give way to accommodate the Railway Labor Act in any case involving a major dispute for which no ultimate sanction but the strike is provided by the Railway Labor Act.

In *Missouri-Kansas-Texas Railroad Co.* v. *Randolph*, 8 Cir., 1950, 182 F. 2d 996, there was no major dispute but a minor dispute involving interpretation and application of contracts which were cognizable by the National Railroad Adjustment Board. The injunction maintained the *status quo* while resort was had to the National Railroad Adjustment Board (see *Randolph* v. *Missouri-Kansas-Texas R.R. Co.*, D. C. N. D. Mo. 1949, 85 F. Supp. 846). The issues there involved are thus, entirely different from those present here. Moreover, the court of appeals in the *Randolph* case ruled there was no abuse of discretion by the district court whereas the court below obviously deemed the district court had abused its discretion in issuing an injunction

when there was no proof of even a probable violation of law.

4. As its second question the petition states (Pet., p. 2):

> "2. Does the Railway Labor Act require that the representatives of the parties to a major railroad labor dispute be authorized to decide such a dispute in conference?"

Here the record shows that the representatives of the parties were in all respect authorized to decide the dispute in conference, subject to only one qualification, that the decision must be ratified by the affected employees. The district court did not decide whether the ratification practice of the union violated the Railway Labor Act, but ruled that that practice taken together with its view that the union negotiators had not made any proposals or counter-proposals, had not recommended to employees adoption of a proposed agreement which was submitted to employee referendum and had not balloted the employees as to arbitration, raised serious and doubtful questions as to whether the union had bargained in good faith (S.A. 167-168, 169, 172-174). The court of appeals ruled that the ratification requirement did not violate the Railway Labor Act (App. A to Pet., pp. 42-43). This ruling is in accord with the express language of the Railway Labor Act, the clear Congressional expression of intent to encourage use of the ratification procedures, the universality of this practice in the labor movement, and the uniform approval of this practice by judicial and administrative decisions.

The provisions of the Railway Labor Act dealing with the duties of railroads and their employees with respect to collective bargaining and the authority of

representatives of each in dealing with the other are set forth in Sections 2, First and Second of that statute. These sections read as follows:

> "First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.
>
> "Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

This language does not say that representatives of employers must be authorized to sign a binding agreement without any further ratification. It says only that such representatives shall be authorized "to confer," "to consider," and "if possible" decide disputes.

The requirement of authority to "confer" clearly does not carry with it a requirement of authority to make a binding agreement without ratification. *First National Bank of Lowell* v. *Lowell National Bank*, 47 F. Supp. 925, (D.C.N.D. Ind., 1942).

In this case the representatives of the Union were authorized by the Union's governing law to confer, consider, and decide the dispute between the Union and the carriers by making a settlement or agreement subject only to the condition that any such settlement or

agreement be ratified by the Union membership (S.A. 164, 165). Such authorization clearly met the statutory requirement.

They in fact did reach an agreement with the carriers based on the Emergency Board report subject only to ratification, by the union membership (S.A. 166). Such action went beyond any statutory requirement.

Section 2, First and Section 2, Second of the Railway Labor Act had their origin in (41 Stat. 456) the Transportation Act of 1920. The basic language of these Sections first appeared in Section 301 of H.R. 10453, which was introduced in 1919 before the 66th Congress, 1st Session, as part of proposed new legislation removing railroads from war time government ownerships. The Senate bill, S. 3288, 66th Congress, 1st Session, did not contain any comparable provision. The ultimate bill adopted, which became Section 301 of Part III of the Transportation Act of 1920, laid down the duties of employees and carriers in substantially the same language as is contained in the present Section 2, First and Second of the Railway Labor Act. Such Section 301 reads as follows:

> "It shall be the duty of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or the employees or the subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto

to the board which under the provisions of this title is authorized to hear and decide such dispute."

The Conference Report on this legislation (Rept. 650, 66th Cong., 1st Session, dated February 18, 1920) states that the effect of this provision is to require carriers and employees "to appoint representatives to confer." This statement at page 60 of the Report reads in full as follows:

> "The House bill makes it the duty of carriers and their employees to take all possible means to adjust their differences in the first instance before referring any dispute to any adjustment board. The Senate amendment had no provision upon this subject. The conference bill contains a declaration, similar to that in the House bill, directing the officials of a carrier and their employees to appoint representatives *to confer* over all matters of dispute." (Emphasis added.)

When the Railway Labor Act of 1926 was adopted (44 Stat. 577), Section 301 of the 1920 legislation was rewritten as Section 2, First and Second of the new statute in the identical language of such Sections in the present Act.

In reporting these proposed provisions the House Committee on Foreign and Interstate Commerce stated in pertinent part.[3]

> "The bill provides in brief as follows:
>
> "(1) It is made the duty of all railroad managers and employees to exert every reasonable effort to make and maintain agreements.

---

[3]Report No. 328, 69th Cong., 1st Sess., February 19, 1926, on H.R. 9463, page 3.

"(2) All disputes *shall be considered first in conference* between representatives designated and authorized so to confer respectively by the carrier and by the employees thereof interested in the dispute." (Emphasis supplied.)

* * *

The Report of the Senate Committee on Interstate Commerce on the 1926 legislation is to the same effect. This report reads in pertinent part as follows:[1]

"Briefly stated, the bill provides—

"First, That it shall be the duties of the parties to exert every reasonable effort to make and maintain agreements.

"Second. That any and all disputes shall first be *considered* in conference between the parties directly interested." (Emphasis supplied.)

* * *

As indicated above, subsequent changes in the Railway Labor Act did not affect the language of Sections 2, First and Second.

These Congressional reports on the intent of Sections 2, First and Second of the Railway Labor Act show that Congress intended only what the language of these Sections clearly states, i.e., that disputes be "considered" in conference between representatives of employers and of carriers and that such representatives make reasonable efforts to settle such disputes. The

[1] Rep. No. 606, 69th Cong., 1st Sess., April 16, 1926, on H.R. 9463. The Report of the Senate Committee on Interstate Commerce on S. 2306, a bill identical to H.R. 9463 (Rep. No. 222, 69th Cong., 1st Sess., February 22, 1926) contains the same statements as are quoted from Rep. No. 606.

designation of union representatives with authority to settle a dispute by making an agreement, subject only to the vote of the union membership, and making of such an agreement by these representatives subject only to such condition, fully complies with this intent. There is not the slightest suggestion in the legislative history of these Sections of the statute to support the petitioners' position.

The great prevalence of provisions in the constitutions of unions requiring ratification of contracts by employees affected, shows this practice is a common feature of collective bargaining. A list of different national or international unions, which require membership ratification of all contracts was attached to the union's verified opposition filed in the district court (S.A. 52-53, 63-80). In connection with preparing the briefs below, the Union examined the files of the Department of Labor and found that 80 different national or international unions, including at least a dozen subject to the Railway Labor Act, reported that either by constitutional provision or practice all union contracts were ratified by affected employees as a prerequisite to becoming legally binding. Neil W. Chamberlain, Collective Barbaining, 1951, pp. 77, 80, states:

> "This requirement of membership ratification, by majority vote, of any agreement reached by union representatives is almost universal. * * *"

To the same effect see Harold W. Davey, Contemporary Collective Bargaining, 2d ed., 1959, p. 234; Edwin F. Beal and Edward D. Wickersham, The Practice of Collective Bargaining, 1959, p. 274; Lloyd C. Reynolds, Labor Economics and Labor Relations, 3rd ed., 1959, p. 178.

The advantages to be derived from membership ratification of contracts have been variously described. The American Civil Liberties Union, Democracy in Trade Unions, N.Y., Nov. 1943, p. 72, comments:

> "* * * Membership approval of contracts entered into, or the formulation of general demands or minimum standards are obviously desirable practices, and if more widely established would avoid the sell-outs and corruption which have marked some union dealings."

Section 201 (a) (5) (K) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 431 (a) (5) (K)) requires unions to file with the Secretary of Labor public reports disclosing among other things what provision the union makes for ratification of contract terms. This section is applicable to labor organizations which have been certified as collective bargaining representatives under the Railway Labor Act, see Labor Management Reporting and Disclosure Act, Section 3 (e) and (j) (29 U.S.C. 402 (e) and (j)).

The committee reports show that the intent of Congress in requiring a public report of contract ratification procedures available within the union was to be certain that union members were aware of such procedures so they could avail themselves thereof. See S. Rept. No. 187, on S. 155, 86th Cong., 1st Sess., pp. 6, 8 (Leg. His. LMRDA, pp. 402, 404) where it is stated:

> "Under the National Labor Relations Act and the Railway Labor Act, a labor organization has vast responsibility for economic welfare of the individual members whom it represents. Union members have a vital interest, therefore, in the policies and conduct of union affairs. To the extent that union procedures are democratic they

permit the individual to share in the formation of union policy.

* * * * * * * * * *

"* * * the rules governing the conduct of the union's business all should be known to the members. Without such information freely available it is impossible that labor organizations can be truly responsive to the members they serve."

The fact that Congress in the Landrum Griffin Act required all unions, those subject to the Railway Labor Act as well as those under the National Labor Relations Act, to make public their procedures for contract ratification so their members could know and insist on having such procedures followed, shows Congress regarded ratification as helping rather than hindering desirable collective bargaining.

The uniform holding of the National Labor Relations Board and the courts in cases arising under the National Labor Relations Act has been that ratification procedures were entirely consistent with good faith bargaining. This has been true with respect to both employer representatives who had to go back to their principals before concluding a binding contract[5] and to union committees whose negotiations were subject to employee ratification.[6]

---

[5] *Lloyd A. Fry Roofing Co.* v. *N.L.R.B.*, 9 Cir., 1954, 216 F. 2d 273, 275; *Great Southern Trucking Co.* v. *N.L.R.B.*, 4 Cir., 1942, 127 F. 2d 180, 185, certiorari denied, 317 U.S. 652.

[6] *N.L.R.B.* v. *New Britain Machine Co.*, 2d Cir., 1954, 210 F. 2d 61. Actually there has never been any case so far as we can find in which it was ever charged that a union refused to bargain collectively because its negotiators could not bind their constituency except after ratification although the Board has regularly mentioned the need for employee ratification when denying a com-

We believe that this question was correctly decided and there is no need for review by this Court.

5. By its third question the petitioners ask this Court to review the course of bargaining between the parties and upset the determination of the court of appeals that the record contains no evidence that the Union bargained in bad faith. This, we submit is not, a proper question for this Court.

Moreover the various alleged defects in the Union's conduct were each baseless, as the court below held. The requirement of ratification, as we have seen, is entirely proper and legal. The failure to recommend to the employees that they accept the proposed contract based on the Emergency Board Report was, as the court below pointed out (App. A to Pet., p. 47), completely in good faith and legal. Whether the law requires any counterproposals, the Union negotiators did make several counterproposals, as the court below found (App. A to Pet., p. 48, n. 5; S.A. 114, 121, 124-125, 130-132, 138-137, 141-146). The failure to submit to referendum the issue of whether to arbitrate was not a violation of the Railway Labor Act. Section 7, First of the Railway Labor Act expressly provides "That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise."

---

plaint that employer negotiators were not fully authorized to bind their principal. *Capital Transit Co.*, 1953, 106 N.L.R.B. 169; *Elgin Standard Brush Mfg. Co.*, 1950, 98 N.L.R.B. 1467, 1484; *W. W. Cross & Co., Inc.*, 1959, 77 N.L.R.B. 1162, 1166, n. 11, enforced 1 Cir., 1950, 174 F. 2d 875; *Shell Oil Co.*, 1948, 77 N.L.R.B. 1306, 1307, n. 4; *The Fort Industry Co.*, 1948, 77 N.L.R.B. 1287, 1300; *Milwaukee Electric Tool Corp.*, 1954, 110 N.L.R.B. 977, 978.

We know of no basis on which the petitioners can properly urge that any illegality inhered in the Union's refusal of the proffer of arbitration.

6. In its fourth question petitioners seek from this Court a review of the propriety of the court of appeals' setting aside as "clearly erroneous" the findings of the district court (Pet., pp. 3, 24-27). Petitioners claim a violation of Rule 52 (a) of the Federal Rules of Civil Procedure (Pet., p. 24). Petitioners admit that the court of appeals termed the findings of the district court "clearly erroneous" but argue this was a mere subterfuge (Pet., p. 24). The record we submit, however, shows beyond doubt that the district court's findings were "clearly erroneous." There was no issue of credibility. Indeed, a reading in context of the testimony of the petitioners' witnesses quoted (Pet., p. 25) shows that in testifying that the Union made no counterproposals, the witnesses were being very technical about what they called an offer or counterproposal. They never denied the testimony of the Union's president, Neil P. Speirs, that he assured the carriers that if they agreed to some slight increase over the formal pattern formula he could get membership ratification (S.A. 124-125, 130). As such changes he suggested a 3 per cent increase in pay effective July 1, 1960 and another 3 per cent effective March 1, 1961 (S.A. 124-125, 138-140, 145-146) or two 2 per cent increases in pay plus fringe benefits such as improved vacations, a new paid holiday or a paid up life insurance policy (S.A. 113-114, 125-126, 131-132, 141).

CONCLUSION

The record here presents no question warranting review by this Court. The court of appeals by its unanimous decision and carefully reasoned opinion, correctly applied the law. There should be no further delay in freeing the employees from the onus of working under an injunction issued by a court which was without jurisdiction to issue such an injunction.

We respectfully submit that the petition for a writ of certiorari should be denied.

LEE LEIBIK,
343 South Dearborn Street
Chicago 4, Illinois

RUTH WEYAND,
1346 Connecticut Avenue, N.W.
Washington 6, D. C.

Attorneys for Respondents

August 16, 1961

APPENDIX

The pertinent provisions of the Norris-La Guardia Act (47 Stat. 70, 29 U.S.C. 101, *et seq.*, are as follows:

"Sec. 1. No court of the United States, as defined in this Act, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

* * * * * * *

"Sec. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment; * * *

* * * * * * *

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

'(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

"(g) Advising or notifying any person of an intention to do any of the act heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the act heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, * * *

* * * * * * *

"Sec. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this Act, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

* * * * * * *

"SEC. 13. When used in this Act, and for the purposes of this Act—

* * * * * * *

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."